IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 33253 of 2004(H)

OS.298/2002 of SUB COURT, MAVELIKKARA

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PETITIONER:

MEENAKSHI PANICKATHY
THAYYILTHARAYIL, PERINGALAMURI,
KAYAMKULAM VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT:

SAJI, S/O. BHASKARAN PILLAI,
ARANTHALA, PERINGALAMURI, KAYAMKULAM VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 - TRUE PHOTO COPY OF PETITION SUPPORTED BY AFFIDAVIT AS IA.869/03 DT.10.3.03.

EXT.P2 – TRUE PHOTO COPY OF ORDER OF SUB JUDGE DISMISSING EXT.P1 DT.24.3.03.

EXT.P3 – TRUE PHOTO COPY OF PETITION AS I.A.867/03 DT.10.3.03

EXT.P4 – TRUE PHOTO COPY OF ORDER DT.24.3.03

EXT.P5 – TRUE PHOTO COPY OF JUDGMENT DT.27.3.03 PASSED BY SUB JUDGE, MAVELIKKARA.

EXT.P6 – TRUE PHOTO COPY OF DECREE PASSED BY DO. DATED DO.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33253 OF 2004

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DATED THIS THE 6TH JUNE, 2007

J U D G M E N T

In this Writ Petition under Article 227 of the Constitution, the defendant impugns Ext.P4 order rejecting her application for accepting the written statement on file. The reason stated in Ext.P4 is that the court has no power to accept written statements which are filed beyond 90 days of receipt of summons by the defendant. The above reasoning of the learned Sub Judge cannot be correct in the light of the pronouncement of the Supreme Court in **Kailash v. Nanhku** (2005 (2) KLT 623). Pursuant to Ext.P4, the learned Sub Judge went on to set the petitioner ex parte and decreed the suit ex parte. Ext.P5 is the ex parte judgment and Ext.P6 is the ex parte decree. In the present Writ Petition, the petitioner prays that Exts.P5 and P6 be set aside.

2. I do not think that this Court will be justified in setting aside Exts.P5 and P6 since a very effective alternate remedy exists for the petitioner, if she is genuinely aggrieved by Exts.P5 and P6. It is open to the petitioner to do the needful to have Exts.P5 and P6 set aside in accordance with law by filing appropriate applications in that regard. Leaving that right open, this Writ Petition will stand disposed of, even

though it is seen that the petitioner has not so far remitted process for service of notice on the respondent, though notice was ordered long ago. Despite the above observations, it is made clear that if the respondent has already levied execution of the decree by filing execution petition, it is not necessary that the court below shows much indulgence towards the petitioner.

No costs.

(PIUS C.KURIAKOSE, JUDGE)

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